



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 3, 1993

Mr. David J. Freeman
Executive Secretary
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711-2080

Letter Opinion No. 93-44

Re: Whether the article 7 of the Texas Racing Act, V.T.C.S. article 179e, requires an individual investor in a licensed pari-mutuel racetrack to be licensed (ID# 16460)

Dear Mr. Freeman:

You ask whether article 7 of the Texas Racing Act (the act), V.T.C.S. article 179e, requires persons who invest in a licensed pari-mutuel racetrack to obtain a license from the Texas Racing Commission (the commission). The act authorizes the commission to issue two basic types of licenses: racetrack licenses and occupational licenses. Article 5 contains general license provisions applicable to both kinds of licenses. Article 6 provides for racetrack licenses. Article 7 provides for occupational licenses. Sections 7.01 and 7.02 of the act provide as follows:

Sec. 7.01 A person shall not participate in racing with pari-mutuel wagering as regulated by the Act without first obtaining a license from the commission. A person who violates this section commits an offense.

Sec. 7.02. (a) Each person involved in any capacity with racing with pari-mutuel wagering, other than as a spectator, as regulated by this Act, must obtain a license under this article. A person who violates this subsection commits an offense.

(b) The commission shall adopt categories of licenses for the various occupations licensed under this article and shall specify by rule the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

V.T.C.S art. 179e, §§ 7.01, 7.02.

By rule, the commission has articulated a list of those individuals who must obtain an occupational license from the commission and the annual license fee associated with each type of license. *See* 16 T.A.C. § 305.35. The commission has included in the list licenses for owners and association officers/directors, among many other types of licenses. *See id.* You explain that an individual in the category designated "Association Officer/Director" is an investor in a racetrack who is on the board of directors or management committee of the racetrack or who is actively involved in the day-to-day

operations of the track. You inform us that presently you do not license investors who do not participate in the management or administration of the racetrack.

You state that the Texas Department of Public Safety has suggested that section 7.02 of the Texas Racing Act may require every individual with any interest in pari-mutuel racing, other than as a mere patron, to obtain a license from the commission, including a person whose only involvement is as a financial backer of a racetrack licensee. We therefore understand your question to relate to an investor whose interest is purely financial and who is not involved in the active management or control of racetrack operations. The commission believes that the act does not require licensing of passive investors in a pari-mutuel racetrack under article 7. We disagree.

A court will give weight to an administrative agency's construction of a statute--unless the agency's construction is contrary to the plain meaning of an unambiguous statute. Attorney General Opinion JM-1149 (1990) at 2. In our opinion, section 7.02 clearly and unambiguously requires all individuals, other than spectators, involved in a racetrack with pari-mutuel wagering to obtain a license from the commission. An investor, even one who has no voice in the management or administration of the racetrack in which he or she has invested, is more than a mere spectator. Section 7.02 therefore mandates that the investor obtain a license from the commission.¹

S U M M A R Y

Section 7.02 of the Texas Racing Act, V.T.C.S. article 179e, requires an individual who invests in a racetrack with pari-mutuel wagering to receive a license from the Texas Racing Commission.

Very truly yours,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹You argue that requiring the commission to fingerprint investors for an occupational license under article 7 of the act would conflict with section 5.03 of the act, which specifically authorizes the commission to fingerprint investors owning at least a five percent interest in a racetrack licensee. However, section 5.03 requires the commission to fingerprint each officer and director of a racetrack licensee, as well as individuals with at least five percent ownership. You do not contend that fingerprinting officers and directors under article 7 conflicts with section 5.03, nor do you argue that article 7 fails to encompass officers and directors. In any event, we do not believe that requiring the commission to fingerprint investors under article 7 conflicts with requiring the commission to fingerprint owners of at least a five percent interest in a racetrack pursuant to section 5.03.